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Subject:—

Opinions Under the Bombay Prevention of Adulteration Act, 1925

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1).	O.N. 2679 12-2-51.	Question whether caffeinated drinks can be prohibited.	1-4.
2).	O N. 17003 25-10-51.	Sec. 4(2)(b) Sholapur Prevention of Adultation Rules---- Question whether offering, keeping or exposing for sale of a mixture of fifty-fifty pure Karadi (safflower)oil and ground nut oil with a label Affixed to that effect on the Tin containing The mixture , in accordance with -rule 8, Sub-clause (E) of the Sholapur the rule is prohibited under the Act or the said Rules.	5-8.

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Legal Department.

Dangerous Drugs Act, 1930.
Drugs Act, 1940.
Drugs (Control)Act, 1950.
Bombay Prevention of Adulteration Act, 1925.

The question raised for the R.L.A.'s consideration is whether caffeinated drinks can be prohibited.

2. It appears that the quantity of caffein per bottle of such drinks is limited to not more than 1/2 grain. The only provisions which can be condidered in this respect are the provisions of the Dangerous Drugs Act, 1930, the Drugs Act, 1940 The Drugs (Control) Act, 1950 and the Bombay Prevention of Adulteration Act, 1925. The Dangerous Drugs Act, 1930 applies to such drugs which are dangerous to human life. Obviously, that Act would have no application to the present case. "Drug" as defined in section 3(b) of the Drugs Act, 1940, included all medicines for internal or external use of human-beings or animals and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals other than medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani Systems of Medicine. It would include caffein. But the Drugs Act, 1940 related to the import manufacture, distribution and sale of drugs It does not purport to provide for the regulation or prohibition of the use of any drug. The Act or the rules will have no application to the present case. Similarly, soft drinks which contain caffein to the limited extent as stated above cannot be considered as drugs within the meaning of section 3(b) and consequently that Act will have no application. "Drug" as defined in section 2(b) of the Drugs (Control) Act, 1950, means any drugs as defined in clause (b) of section 3 of the Drugs Act, 1940 in respect of which a declaration has been made under section 3. The Drugs (Control) Act, 1950,

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will not apply."Food" as defined in section 2(a) of the Bombay Prevention of AdulterationAct, 1925, includes every article used for food or drink by man other than drugs or water and any article which ordinarily enters into or used in the composition or preparation of human food and also includes flavouring matters and condiments. Section 3 provides : "Any person who mixes, colours, stains or powders or orders or permits any other person to mix, colour, stain or powder any article of food with any matter or ingredient, in contravention of the rules or so as to render the article injurious tohealth with intent that the same may be sold in that state or sells or offers, keeps or exposes for sale any such article so mixed, coloured,stained or powdered etc. shall be punishable." If caffein is used with any article of food, the said article must be proved to be injurious to health to invoke the provisions of section 3. It does not appear that the soft drinks including caffein to the extent of the quantity proposed can be held to be injurious to health. Consequently, the provisions of section 3 would not be availableEven if the use of the proposed drinks may lead to a habit, if the manufacturers state on the labels that the drink contains caffein no offence under section 4 of the Act would be committed.

3. In the circumstances , it appears that so far there is no law in this State which can enable Government to prevent the use or sale of these soft drinks and the view taken by H.M. (Health) is correct. But the manufacturers may be warned that unless they state on the label that the drink contains caffein, and thequantity proposed to be used, it is likely that they would be committing an offence under section 4 of the Act.

Id/- dt/

Additional Secretary to Government

V.v.k. 22/6/56/ U.R. to L.S.G. & P.H.D. No. 2679 , dated 12/2/57

Legal Department.

Bombay Prevention of Adulteration Act, 1925. Section 4(2)(b)
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Sholapur Prevention of Adulteration Rules
Mixture of two pure edible oils.

The question for H.L.A.'s consideration is whether offering, keeping or exposing for sale a mixture of fifty-fifty pure Karadi (Safflower) oil and ground nut oil with a label affixed to that effect on the tin containing the mixture, in accordance with rule 8, sub-clause (E) of the Sholapur Prevention of Adulteration of Articles of Food Rules is prohibited under the provisions of the Bombay Prevention of Adulteration Act, 1925 , or the said Rules.

2. Under section 4(1)(b) any persons who manufactures or offers, keeps or exposes for sale any article of food which is not of the nature, substance or quality which is purports to be has been made punishable. Section 19(1)(c) gives Government power, in consultation with the local authorities, to make rules not inconsistent with the provisions of the Act for determining what deficiency in any of the normal constituents of any article of food or what addition of extraneous matter shall raise a presumption, until the contrary is proved, that such food is injurious to health within the meaning of section 3 or is not of the nature, substance or quality it purports to be within the meaning of section 4. Under the Rules made by Government for the Sholapur Municipal Area edible oil which is not as defined or which contains white oil or any other mineral or poisonous vegetable oil shall be deemed to be not of the nature , substance or quality which it purports to be (cl. (xi) of rule 6). "Edible oil" is defined in clause (xiii) of Rule 2 as follows:-

"'Edible Oil' means almond oil , groundnut oil, cocoanut oil, mustard oil, cotton seed oil, linseed oil, niger seed oil,, olive oil, popy seed oil, rape oil, soya bean oil, safflower oil, sesame oil, sunflower oil, in the pure state either liquid or solid".

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Had the mixture in the present case been sold or kept or exposed for sale either as groundnut oil or safflower oil, it would have amounted to a contravention of section 4(2)(b) of the Act, Taht however is not the case here. The mixture is not sold either as ground nut oil or safflower oil but as a mixture of the two oils. The sale of such a mixture is protected by the proviso in section 4(2)(b) which says that no offence shall be deemed to have been committed where any matter or ingredient not injurious to health has been added or mixed with or abstracted from any article of food, before the sale thereof, the seller has brought to the notice of the purchaser by means of a label conforming to such conditions as may be prescribed by rules in this behalf, the fact that such matter or ingredient has been so added, mixed or abstracted or the article is composed of such matters or ingredients. All that the seller in such case is required to do is to affix a label to the article "conforming to such conditions as may be prescribed by rules". Conditions in regard to the said labels are laid down in rule 8 of the Rules. It is presumed that the label affixed to the mixture in the present case conforms to the provisions of rule 8. It is not alleged that the mixture of two edible oils is injurious to health. The sale of the mixture is therefore not an offence and the view taken by the Sholapur Municipality is correct.

Id/-

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 17003, dated the 25th October 1951.

V.v.k. 22/3/56/ 5C.